

PLEASE TAKE FURTHER NOTICE that a copy of this removal petition has been filed with the Clerk of the Supreme Court of the State of New York, County of Bronx, thereby effecting removal pursuant to 28 U.S.C. § 1446(b).

PLEASE TAKE FURTHER NOTICE that by effecting removal of this civil action, Northwestern reserve all rights to raise any and all defenses available under the Federal Rules of Civil Procedure, including, but not limited to, FED. R. CIV. P. 12.

PLEASE TAKE FURTHER NOTICE that in support of this notice of removal, Northwestern shall rely upon the following:

1. On or around March 28, 2006, a verified complaint was filed in the Supreme Court of the State of New York, County of Bronx. Annexed hereto as Exhibit "A" are copies of the summons and verified complaint, together with correspondence issued by the State of New York, Insurance Department, dated April 3, 2006, which constitutes all process, pleadings and/or orders served upon and first received by Northwestern to date within the meaning and intent of 28 U.S.C. § 1446(b).

2. Northwestern was first served with the summons and verified complaint on April 7, 2006, when it first received correspondence dated April 3, 2006, from the State of New York, Insurance Department, enclosing the summons and verified complaint. On April 7, 2006, Northwestern first had notice of the institution of suit and of the basis for the removal of this civil action upon its first receipt of the documents annexed hereto as Exhibit "A". Removal is therefore timely under 28 U.S.C. § 1446(b) in that the filing of the within petition occurred within thirty (30) days of the service of the summons and complaint upon Northwestern.

3. The Court's review of the complaint will reveal that plaintiff, Giuseppe Guglielmi ("Guglielmi") alleges that he was covered under a policy of group long term disability insurance issued by Northwestern, which provides a benefit of \$6,000 per month in

the event of total disability (Verified Complaint, ¶ 5). Guglielmi alleges that he became partially disabled on or about July 1, 2002 and totally disabled on or about July 1, 2003 (Verified Complaint, ¶¶ 6 and 7). Guglielmi alleges that he was, “entitled to receive from the defendant under the said policy, the sum of \$6,000 per month for the period of plaintiff’s disability commencing July 1, 2003” (Verified Complaint, ¶ 7). Guglielmi seeks a “judgment by this court declaring that the defendant is and was required to pay disability benefits under their policy of insurance” (Verified Complaint, ¶ 13).

4. The policy of group long term disability insurance referenced in the complaint was issued by Northwestern to Firststar Trust Company, Trustee of the Northwestern Mutual Life Insurance Trust. The policy provides insurance to participating employees of multiple employers, including Regent Street Restaurant d/b/a Hostaria Mazzei (“Regent Street”). Guglielmi was a participating employee while he was purportedly employed by Regent Street.

5. The policy of group long term disability insurance funds, in whole or in part, an employee welfare benefit plan established and maintained by Guglielmi’s employer, Regent Street, within the meaning and intent of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1001, et seq. The gravamen of the verified complaint relates to and concerns Guglielmi’s claim for benefits under an employee welfare benefit plan within the meaning and intent of ERISA. As such, this action is governed exclusively by ERISA.

6. Given the applicability of ERISA, pursuant to 29 U.S.C. § 1132(e), the United States District Courts are provided with subject matter jurisdiction over all matters for, inter alia, benefits provided under employee welfare benefit plans, including the plan made the subject of the action instituted by Guglielmi. Furthermore, pursuant to 29 U.S.C. § 1144, the terms and

provisions of ERISA totally preempt all state causes of action, including causes of action for breach of contract and otherwise. Removal is therefore appropriate under and pursuant to 28 U.S.C. § 1441(a) and (b). See Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987).

7. In addition, by way of the complaint, Guglielmi alleges, “there is due and owing to the plaintiff from the defendant the sum of \$180,000 for the period of July 1st, 2003, to the present date, and the further sum of \$6,000 per month as long as such disability continues” (Verified Complaint, ¶ 16). “[P]laintiff demands judgment against the defendant in the sum of One Hundred Eighty Thousand (\$180,000) Dollars” (Verified Complaint, ¶ 17).

8. At the time of the filing of the complaint and the within removal petition, the amount in controversy between the parties exceeds the sum of \$75,000, exclusive of interest and costs of suit. As such, the jurisdictional monetary prerequisite of 28 U.S.C. § 1332(a) has been met.

9. The complaint alleges that Guglielmi was and still is a resident of Bronx County, City in the State of New York, and as such, he is a citizen of the State of New York within the meaning and intent of 28 U.S.C. § 1332.

10. Northwestern is a corporation of and maintains its principal place of business in the State of Wisconsin, and is a citizen of the State of Wisconsin within the meaning and intent of 28 U.S.C. § 1332.

11. There was complete diversity of citizenship between Guglielmi and Northwestern at the time of the filing of the complaint and the within removal petition. As such, this Court also maintains jurisdiction over this matter pursuant to and in accordance with 28 U.S.C. § 1332. Removal is therefore appropriate pursuant to both 28 U.S.C. § 1441(a) and (b).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
Attorneys for Defendant,
Northwestern Mutual Life Insurance Company

By: _____
Randi F. Knepper, Esq.

Dated: April 27, 2006

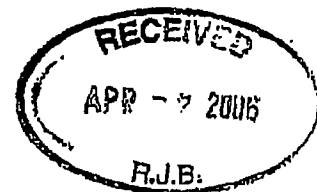
EXHIBIT A

APR-11-2006 13:58

EB - LAW DEPT.

971 321 6407 P.02/12

STATE OF NEW YORK
INSURANCE DEPARTMENT
One Commerce Plaza
Albany, NY 12257



STATE OF NEW YORK
Supreme Court, County of Bronx

Gluseppe Guglielmi

against

Plaintiff(s)

Northwestern Mutual Life Insurance Company

Defendant(s)

13382/06

RE : Northwestern Mutual Life Insurance Company

Attorney for Plaintiff(s) and Defendant please take notice as follows:

Sirs :

Attorney for Plaintiff(s) is hereby advised of acknowledgement of service upon me of Summons and Verified Complaint in the above entitled action on March 31, 2006 at New York, New York. The \$40 fee is also acknowledged.

Original to Attorney for Plaintiff(s) :

Hankin, Handwerker & Mezel, PLLC
7 Penn Plaza
Suite 904
New York, New York 10001

Pursuant to the requirement of section 1212 of the Insurance Law, Defendant is hereby notified of service as effected above. A copy of the paper is enclosed.

Duplicate to Defendant :

Robert J. Berdan, Vice President and General Counsel
Northwestern Mutual Life Insurance Company
720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202


by Salvatore Castiglione
Assistant Deputy Superintendent & Chief

Dated Albany, New York, April 03, 2006

393824 C.A.#174700

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971 321 6407 P.03/12

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

GIUSEPPE GUGLIELMI,

Plaintiff(s),

Index No.: **13382-2006**

**Plaintiff designates
BRONX County as the
place of trial.**

-against-

**NORTHWESTERN MUTUAL LIFE INSURANCE
COMPANY,**


Defendant(s)

**Plaintiff's Address:
2223 Bouck Avenue
Bronx, New York 10469**

**The basis of venue is:
Plaintiff's Address**

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of the answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within thirty days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

**Dated: New York, New York
March 2, 2006**

**Yours, etc.,
HANKIN, HANDWERKER & MAZEL, P.L.L.C.
Attorneys for Plaintiff
BY: 
MARK L. HANKIN, ESQ.
7 PENN PLAZA, SUITE 904
New York, New York 10001
(212) 349-1668**

**2006 MAR 28 PM 3:27
CLERK OF COURT
BRONX COUNTY**

DEFENDANT(S) ADDRESS(ES):

**720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202**

APR-11-2006 13:58

EB - LAW DEPT.

971 321 6407 P.04/12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

GIUSEPPE GUGLIELMI,

Plaintiff(s),

-against-

NORTHWESTERN MUTUAL LIFE INSURANCE
COMPANY,

Defendant(s)

Index No.: 13382/06
MAR 28 2006


Plaintiff designates
BRONX County as the
place of trial.

Plaintiff's Address:
2223 Bouck Avenue
Bronx, New York 10469

The basis of venue is:
Plaintiff's Address

YOU ARE HEREBY SUMMONED, to answer the complaint in this action and to serve a copy of the answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within thirty days after the service is complete if this summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

Dated: New York, New York
March 2, 2006

Yours, etc.,
HANKIN, HANDWERKER & MAZEL, P.L.L.C.
Attorneys for Plaintiff
BY: 
MARK L. HANKIN, ESQ.
7 PENN PLAZA, SUITE 904
New York, New York 10001
(212) 349-1668

DEFENDANT(S) ADDRESS(ES):

720 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

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971 321 6407 P.05/12

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
GIUSEPPE GUGLIELMI.

Plaintiff,

VERIFIED
COMPLAINT

-against-

NORTHWESTERN MUTUAL LIFE INSURANCE
COMPANY,

INDEX NO. 13382/06

Defendant.
-----X

MAR 28 2006

Plaintiff, GIUSEPPE GUGLIELMI, by his attorneys, HANKIN, HANDWERKER
& MAZEL, PLLC., as and for his Verified Complaint, alleges as follows:

1. At all the times hereinafter mentioned, plaintiff, GIUSEPPE
GUGLIELMI (GUGLIELMI) was and still is a resident of Bronx County, City and
State of New York.

2. That at all times hereinafter mentioned, the defendant,
NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY (NORTHWESTERN) was
and is a corporation duly organized under and by virtue of the laws of the State
of Wisconsin, with its place of business located at 720 East Wisconsin Avenue,
Milwaukee, Wisconsin 53202.

3. That at all times hereinafter mentioned, defendant NORTHWESTERN
was and is a foreign corporation, duly licensed to conduct business as an
insurance company in the State of New York.

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4. At all times hereinafter mentioned, the defendant NORTHWESTERN was and is engaged in the insurance business, providing life insurance and disability insurance, for accidents and/or sickness resulting to its insureds.

5. That on March 27, 2002, in consideration for the payment by plaintiff to the defendant of the premiums called for thereby, NORTHWESTERN made, executed and delivered to plaintiff its policy of group long term disability insurance, (the "policy") in and by which it insured plaintiff against loss of time and earnings on account of sickness, illness or disease for total or partial disability; and based thereon agreed to pay plaintiff after a ninety (90) day waiting period, the sum of \$6,000.00 per month in the event of total disability.

6. Thereafter on or about July 1st, 2002, and, while the said policy of insurance was in full force and effect, plaintiff became ill, resulting in the plaintiff's partial disability to the extent that he was partially unable to perform any of the duties pertaining to his occupation.

7. Thereafter on or about July 1st, 2003, and, while the said policy of insurance was in full force and effect, plaintiff's illness worsened, resulting in the plaintiff's total disability to the extent that he was totally unable to perform any of the duties pertaining to her occupation and that as a consequence thereof, plaintiff became entitled to receive from the defendant under the said policy, the sum of \$6,000.00 per month for the period of plaintiff's disability commencing July 1, 2003.

8. That on or about December, 2004, the plaintiff was determined to be totally disabled based upon his illness and inability to work by the Social Security Administration as same is defined under Federal Law.

9. That on or about the July 1st, 2003 plaintiff caused written notice of the said disability to be given to the defendant and furnished to the defendant proof of such disability, as required by the said policy of insurance.

10. Plaintiff has duly performed all of the conditions of such policy of insurance on his part to be performed.

11. That on or about October 2, 2003, defendant NORTHWESTERN denied plaintiff's claim for disability benefits.

12. That a justiciable controversy exist between parties relative to the rights and obligations of the defendant to pay disability benefits under the policy of insurance.

13. That as a direct result of the above, plaintiff requires judgment by this Court declaring that the defendant is and was required to pay disability benefits under their policy of insurance.

14. That plaintiff has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION

15. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs "1" through "14" as though fully set forth at length herein.

16. That as a direct result of the breach of the aforesaid insurance policy, there is due and owing to the plaintiff from the defendant the sum of \$180,000.00 for the period of July 1st, 2003 to the present date, and the further sum of \$6,000.00 per month as long as such disability continues. No part of said sum of \$180,000.00 has been paid, although payment thereof has been duly demanded.

17. That based upon the foregoing, plaintiff demands judgment against the defendant in the sum of One Hundred Eighty Thousand (\$180,000.00) Dollars representing arrears in disability payments and judgment directing the defendant to pay benefits on a monthly basis for the duration of plaintiff's disability under the policy of insurance.

18. That plaintiff has no adequate remedy at law.

AS AND FOR A THIRD CAUSE OF ACTION

19. Plaintiff repeats, reiterates and realleges each and every allegations contained in paragraphs "1" through "18" as though fully set forth at length herein.

That defendant sells Group Term Disability Policies that are same or similar to the policy herein to employers located in the State of New York for the benefit of their employees.

21. That defendant represents that for a premium paid they will pay benefits to the public for accidents and/or disabilities sustained by employees while covered under the policy of insurance.

22. That defendants have shown a pattern and practice of denying claims for Long Term Disability to employees for illnesses which lead to total disability even though by their policy such illnesses are not excluded under their policies.

23. That as a direct result of this deceptive practice, the plaintiff and consumers in general, sustain damages in failing to provide needed income during their period of disability.

24. That as a direct result of the above, plaintiff demands statutory damages under General Business Law §349 plus reasonable counsel fees and the costs and disbursements of this action.

WHEREFORE, plaintiff GIUSEPPE GUGLIELMI, demands judgment against the defendant, as follows:

(a) On his First Cause of Action for a judgment declaring that the defendant is required to pay the plaintiff disability benefits in accordance with their Group Term Disability Policy from the date of total disability to the date said disability terminates;

(b) On his Second Cause of Action for a money judgment in the sum of One Hundred Eighty Thousand (\$180,000.00) Dollars representing arrears in the payment of disability income under the policy of Insurance and a judgment declaring that the defendant must pay monthly benefits to the plaintiff until the termination of his disability;

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(c) On his Third Cause of Action for statutory damages under GBL
§349 plus reasonable counsel fees and the costs and disbursements of this
action; and

(d) Plus the costs and disbursements of this action.

Yours, etc.,

Hankin, Handwerker & Mazel, PLLC
Attorney for Plaintiff

By: 

Mark L. Hankin

Office & P.O. Address
7 Penn Plaza, Suite 904
New York, New York 10001
(212) 349-1668
File No. 17832

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VERIFICATION BY AFFIDAVIT

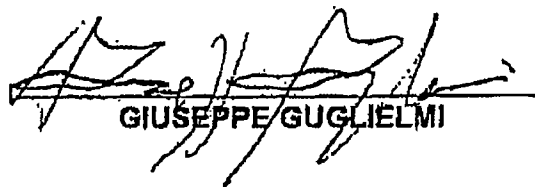
STATE OF NEW YORK, COUNTY OF BRONX ss:

GUISEPPE GUGLIELMI, being duly sworn, says:

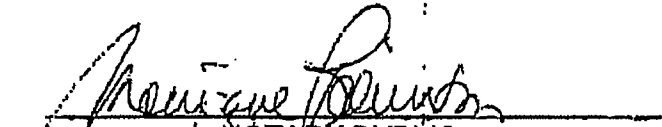
I am a Plaintiff in the action herein: I have read the annexed

COMPLAINT

and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my personal files


GIUSEPPE GUGLIELMI

Subscribed and sworn to before me
this 20 day of March, 2006


MONIQUE ROBINSON
NOTARY PUBLIC
NOTARY PUBLIC, State of New York
No. 01A08087818
Qualified in Bronx County
Commission Expires Feb. 18, 2007

Index No.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

GIUSEPPE GUGLIELMI,

Plaintiff,

-against-

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY,

Defendant.

SUMMONS AND VERIFIED COMPLAINT

HANKIN, HANDWERKER & MAZEL, PLLC

Attorneys for Plaintiff

7 Penn Plaza, Suite 904

New York, NY 10001

(212)349-1668

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contention contained in the annexed document are not frivolous.

Dated: New York, New York
03/16/06



Mark L. Hankin, Esq.

TOTAL P.12